

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

August 17, 2006

In re application of : Robert Manuel Carmichael
Serial No. : 09/730,116
Filed : December 5, 2000
For : ACTIVE CONTROL RELEASABLE BALLAST
SYSTEM FOR USE WITH DIVE EQUIPMENT
Examiner : Ajay Vasudeva
Art Unit : 3617
Our File No. : 1064.8002

CERTIFICATE OF MAILING

I hereby certify that this correspondence, and any attachments thereto, is being filed via electronic filing with the Commissioner For Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

<u>Francis Ronald</u>	<u>Francis Ronald</u>	<u>08/17/2006</u>
Name of Person Mailing Paper	Signature	Date

COMMUNICATION

Mail Stop Amendments
Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

Pursuant to the Examiner's Request for Additional Information dated July 25, 2006, Applicant response accordingly.

The Examiner is requesting a statement clarifying whether or not an offer for sale in the United States was made by Applicant more than one year prior to the effective filing date, December 5, 2000. Applicant respectfully submits that the Examiner is misinterpreting the statements made in paragraph 6 of page 2 of Applicant's Affidavit dated May 15, 2006 (the Examiner lists the Affidavit date as May 15, 2005).

Paragraph 6 does not reference any offer for sale. Rather, it is stated that Applicant confidentially disclosed the invention to Scuba Pro to determine their interest, if any, in entering a business relationship with respect to the invention. Entering into a business relationship is not an offer to buy or sell a product. As referenced further in the May 15th Affidavit, and in previous Declarations or Affidavits filed by Applicant for this Application, no product was ready for sale back in December, as the Commercial embodiment of the product continued to be developed in the year 2000. The business relationship noted in paragraph 6 is merely whether Scuba Pro wanted to work with Applicant with the further development of the invention. There was no offer for sale to Scuba Pro during the meeting.

Furthermore, the statements made in paragraph 6 of the Affidavit do not constitute an offer for sale as defined by the Supreme Court in Pfaff vs. Wells Elec., Inc. 525 U.S. 55 (1998). Additionally, as shown in exhibits attached to prior filed documents for this application, the Confidentiality Agreement between Scuba Pro and Applicant was entered on December 16, 1999 (see page one, paragraph two of Exhibit, to the Amendment filed by Applicant on November 15, 2002). As stated in paragraph 6 of Applicant's May 15th Declaration, the invention was disclosed to Scuba Pro in confidence in view of the Confidentiality Agreement.

Thus, though no offer for sale took place, assuming, *arguendo*, that such an offer had actually been made, the meeting between Scuba Pro and Applicant occurred after the signing of the Confidentiality Agreement on December 16, 1999, which is not more than one year from the December 5, 2000 filing date of the application. Accordingly, there is no "on sale" bar with respect to this application from the confidential discussion between Scuba Pro and Applicant occurring in the later half of December 1999.

Applicant has completely responded to the Examiner's request dated July 25, 2006. Favorable action is respectfully requested.

If there are any additional charges, including extension of time, please bill our Deposit Account No. 503180.

Respectfully submitted,



Daniel S. Polley, Reg. No. 34,902

CUSTOMER NO. 44538